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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/001,751	10/31/2001	Paul H. Stypulkowski	11738.00025	4340
27581	7590	05/20/2004	EXAMINER	
MEDTRONIC, INC. 710 MEDTRONIC PARKWAY NE MS-LC340 MINNEAPOLIS, MN 55432-5604				DROESCH, KRISTEN L
		ART UNIT		PAPER NUMBER
		3762		

DATE MAILED: 05/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/001,751	STYPULKOWSKI, PAUL H. <i>M</i>
	Examiner	Art Unit
	Kristen L Drosch	3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 4-16-04 (response).
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 1-8, 17 and 19 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 9-16 and 18 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 31 October 2001 is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All
 - b) Some *
 - c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2/5-9-02</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group II in paper No.04-16-04 is acknowledged.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 15 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 15 recites the limitation "the microphone" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 9-11, and 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Sultan (5,843,142). Regarding claim 9, Sultan shows a system comprising a signal generator (1); at least one implantable lead (11, 43, 41), coupled to the signal generator; a sensor (4), a controller that adjusts at least one stimulation parameter in response to the signal from the sensor (Col. 7, lines 4-19).

With respect to claim 10, Sultan shows the controller detects when the patient starts speaking and starts the electrical stimulation in response to that patient having started to speak (Col. 6, line 62- Col. 7, line 8).

Regarding claim 11, it is inherent that the controller of Sultan stops the electrical stimulation a predetermined amount of time after the patient has started to speak, since the controller executes electrical stimulation to perform a task (walking sitting, standing) upon receiving a voice command from the patient.

With respect to claims 14-15, Sultan shows the sensor is a human implantable microphone (4) (Col. 6, lines 47-51).

Regarding claim 16, Sultan shows the controller uses a speech-recognition algorithm (claim 1).

6. Claims 9 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Fishell et al. (6,128,538). Fishell et al. shows a system comprising a signal generator (40), at least one implantable lead (17A-N, 15A-N) coupled to the signal generator, a sensor (30); and a controller that adjusts at least one stimulation parameter in response to the signal from the sensor (Abs).

The statements of intended use have been carefully considered but are not considered to impart any further structural limitations over the prior art.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sultan (5,843,142) in view of Goldfarb (5,111,814). Sultan is explained as before. Although Sultan fails to show the sensor is an electromyographic sensor, attention is directed to Goldfarb which shows electromyographic sensors are well known for sensing the electrical activity of the muscles of the larynx. Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify the device of Sultan with the sensor of Goldfarb since Goldfarb teaches it is well known to utilize an electromyographic sensor for sensing the electrical activity of the muscles of the larynx.

9. Claim 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sultan (5,843,142) in view of Rothenburg (4,909,261). Sultan is explained as before. Although Sultan fails to show the sensor is an electroglottographic sensor, attention is directed to Rothenburg which shows electroglottographic sensors are well known for sensing a waveform related to the vibratory patterns of the larynx (Col. 1, lines 31-36). Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify the device of Sultan with the sensor of Rothenburg since Rothenburg teaches it is well known to utilize an electroglottographic sensors are well known for sensing a waveform related to the vibratory patterns of the larynx.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristen L Droeisch whose telephone number is 703-605-1185. The examiner can normally be reached on M-F, 10:00 am - 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angie Sykes can be reached on 703-308-5181. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kristen Droeisch
kld

Angela D. Sykes

ANGELA D. SYKES
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700